

Federal Court of Appeal



Cour d'appel fédérale

Ottawa, Ontario  
K1A 0H9

December 19, 2017

**PROOF OF DELIVERY**

Mr. K. William McKenzie  
KWM Professional Corporation  
Suite 203  
82 Colborne Street East  
Orillia, Ontario  
L3V 1T7

Dear Mr. McKenzie :

**RE:** Julian Fantino v. Donald Best et al  
Court File Number: A-414-17

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Further to the Direction of the Court (Boivin J.A.) dated December 15, 2017 the Notice of Appeal has been filed as of December 15, 2017. Please find enclosed certified copies of the Notice of Appeal as well as a copy of the Court's Direction.

Please note that, pursuant to Rule 133 of the Federal Courts Rules, the Registry has served the Attorney General of Canada with the Notice of Appeal.

Yours truly,

A solid black rectangular box redacting the signature of the Registry Officer.

Jean-François Duport  
Registry Officer

Enc.

Pursuant to section 20 of the *Official Languages Act* all final decisions, orders and judgments, including any reasons given therefore, issued by the Court are issued in both official languages. In the event that such documents are issued in the first instance in only one of the official languages, a copy of the version in the other official language will be forwarded on request when it is available.

Conformément à l'article 20 de la *Loi sur les langues officielles*, les décisions, ordonnances et jugements définitifs, avec les motifs y afférents, sont émis dans les deux langues officielles. Au cas où ces documents ne seraient émis, en premier lieu, que dans l'une des deux langues officielles, une copie de la version dans l'autre langue officielle sera transmise, sur demande, dès qu'elle sera disponible.



**TO :** Appeal Registry  
**FROM :** Boivin J.A.  
**DATE :** December 15, 2017  
**RE :** N/A *Julian Fantino v. Donald Best et al.*

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**DIRECTION**

Following a motion for appeal by Mr. Julian Fantino, an oral direction of the Federal Court (Boswell J.) dated November 16, 2017, was issued. Mr. Fantino's notice of appeal of the Federal Court's decision was received by the Registry on November 24, 2017.

The said direction of the Federal Court was used in place of an order.

Therefore, the Registry shall file the notice of appeal.

"RB"

Court File No.: **A-414-17**

**IN THE FEDERAL COURT OF APPEAL**

**BETWEEN:**

**JULIAN FANTINO**

Appellant/Proposed Intervenor

And

**DONALD BEST**

Respondent/Applicant

- and -

**THE ATTORNEY GENERAL OF CANADA**

and

**THE HONOURABLE  
MR. JUSTICE J. BRYAN SHAUGHNESSY**

Respondents/Respondents



**NOTICE OF APPEAL**

**TO THE RESPONDENTS:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at 180 Queen St W, Toronto, ON M5V 1Z4

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.


IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

*December 15, 2017*  
~~November 22, 2017~~

JEAN-FRANCOIS DUFORT  
REGISTRY OFFICER  
AGENT DU GREFFE

Issued by:   
(Registry Officer)

Address of local office: 180 Queen St W, Toronto, ON M5V 1Z4

TO: ATTORNEY GENERAL OF CANADA  
Victor Paolone  
Department of Justice, Canada  
Ontario Regional Office  
The Exchange Tower  
130 King Street West  
Suite 3400, Box 36  
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AND TO:  
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Lawyer for the Honourable Justice J.B. Shaughessy

AND TO:  
SLANSKY LAW PROFESSIONAL CORPORATION  
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## APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the Order of Justice Boswell dated November 16<sup>th</sup>, 2017 in action T-604-16 by which the learned Judge effectively dismissed the Appeal Motion brought by Julian Fantino which was returnable November 20<sup>th</sup>, 2017 without hearing submissions.

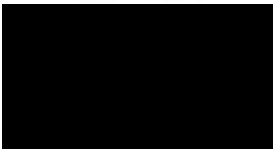
THE APPELLANT ASKS that the Order be set aside and that this Court hear the Appeal Motion of Julian Fantino or alternatively that it be sent back to the Federal Court to be heard with such Directions as this Court deems appropriate in respect of the subject matter of the Application and the Application for Intervention.

THE GROUNDS OF APPEAL are as follows:

1. The Application was scheduled to be heard November 20<sup>th</sup>, and 21<sup>st</sup>, 2017. Julian Fantino sought leave to intervene and Prothonotary Ayles dismissed his motion. Mr. Fantino served a Motion for Appeal of Madame Ayles's Order to the Federal Court returnable November 20<sup>th</sup>, 2017.
2. Justice Boswell adjourned the Motion for Appeal to a date to be fixed by the Registrar during the General Sittings of this Court. His endorsement states:  
  
*"The proposed intervener's Notice of Motion for an appeal in respect of the order of Case Management Judge Ayles issued on October 25, 2017, should be scheduled for General Sittings and will not be heard at the hearing of the Applicant's Application for Judicial Review scheduled to commence next Monday, November 20, 2017.*
3. Justice Boswell did not give reasons to accompany this endorsement.
4. Justice Boswell then proceeded to hear the Application on November 20<sup>th</sup> and 21<sup>st</sup>, 2017 and reserved his decision.

5. By hearing the Application before the Motion for Appeal is heard the Court effectively dismissed the Motion for Appeal because its purpose was to allow Mr. Fantino to intervene in the hearing of the Application.
6. The learned Judge erred in fact and law and breached the Rules of the Federal Court by proceeding out of order. He dismissed an appeal and denied Mr. Fantino's right to appeal under Rule 51(1) of the Federal Court Rules without holding a hearing in open Court, without hearing any arguments, and did not give reasons. He failed to consider the position of the parties to the Application and their right to be heard and/or seek an adjournment or other relief. He failed to grant the reasonable remedy of adjourning the argument of the Application until it could be determined if the proposed intervenor could assist the Court in assessing the merits of the Application.
7. The dismissal of the Motion for Appeal was an error because the Federal Court Rules were breached when the Court failed to consider Rule 36 which permits an adjournment as being advisable in certain circumstances.
8. The learned Judge failed in his duty to fully consider the merits of the Application with the assistance of Mr. Fantino as intervenor. There was no prejudice to anyone if Mr. Fantino's Appeal Motion had been allowed to proceed on November 20<sup>th</sup>, 2017. This matter invokes the public interest and arguably a most important tribunal, the CJC. The public interest suggests that the Appeal Motion should have been fully adjudicated even if the Application had to be adjourned.
9. The grounds for this Appeal also include those contained in the Appeal Motion documents which reinforce the wisdom of allowing Mr. Fantino to intervene and the benefit not only to the Parties but to the public interest.
10. Such further grounds as counsel may advise and this Court permit.

November 22<sup>nd</sup>, 2017



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Canada  
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I HEREBY CERTIFY that the above document is a true copy of  
the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme  
à l'original déposé au dossier de la Cour fédérale.

Filing date December 15, 2017  
Date de dépôt

December 19, 2017  
Dated  
Fait le



JEAN-FRANÇOIS DUPORE  
REGISTRY OFFICER  
AGENT DU GREFFE